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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,128	01/28/2004	William C. Batten	2913-031	2106

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EXAMINER

UPTON, CHRISTOPHER

ART UNIT PAPER NUMBER

1724

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/766,128		BATTEN ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Christopher Upton		1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 5-8, 10-16, 21-28 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 17-19 and 29 is/are rejected.
- 7) ☒ Claim(s) 3, 4 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The following restriction requirement was inadvertently omitted from the requirement mailed on 5/3/2006:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-29, drawn to a method and apparatus for grease removal, classified in class 210, subclass 776.
- II. Claim 30, drawn to a method for installing a grease removal apparatus, classified in class 29, subclass 428.

The inventions are independent or distinct, each from the other because:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as by drilling the discharge port into an endwall.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Howard MacCord Jr. on June 8, 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-29, as further restricted by the genus/species requirement of May 3, 2006. Affirmation of this election must be made by applicant in replying to this Office action.

Claim 30 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

2. Applicant's election without traverse of Species (a), the embodiment having a pierced weir in the reply filed on May 10, 2006 is acknowledged. However, applicant states that claims 9, 10, 17, 24 and 30 are generic. It is submitted that claim 30 recites a method of manufacture, which is restrictable from the other claims, as stated in paragraph 1, above; and that claims 10 and 24 belong to species (f), the embodiment having a pair of closeable fittings. The claims examined are therefore generic claims 1, 9, 17, 18 and 29; and elected claims 2, 3, 4, 19 and 20.

3. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 lacks antecedent basis for the housing. It appears that the reference should be to the container.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Oliver or Morris.

Oliver and Morris each disclose separators having liquid level maintaining means, lighter substance overflows, and a means to raise the water level, substantially as claimed. While the references do not disclose the use in a kitchen for grease removal, it is submitted that this is an intended use limitation obviously failing to distinguish over the structure shown in the references, as the devices of the references are used to separate a lighter substance from water. With respect to the recitation of the raising of the water level to allow the oil or grease to overflow, it is submitted that this is a method limitation, and the devices shown in the references obviously have the means to perform the function, namely, the overflow system (19-22) of Morris and the level adjusting weir (D2, D3) of Oliver.

6. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Use et al.

Use discloses a separator having a liquid level maintaining means, lighter substance overflow, and a means to raise the water level in the form of heavier flows, substantially as claimed. While Use does not disclose the device connected to a kitchen drain for grease removal, it is submitted that this is an intended use limitation obviously failing to distinguish over the structure shown by Use, as the device is used to separate a lighter substance from water.

7. Claims 1, 2, 9, 18, 19 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirshstein.

Hirshstein discloses a separator for removing grease from kitchen water having a liquid level maintaining means, lighter substance overflow, and a means to raise the water level in the form of heavier flows so that the grease flows out of the overflow, as claimed.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1, and further in view of Evanovich et al.

Claim 17 differs from claim 1 in recitation of the container being rotomolded. It is submitted that use of any known method of manufacture for the container fails to patentably distinguish over the structure recited, and that rotomolding is a well known method of making a container, as exemplified by Evanovich.

9. Claims 3, 4 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The recitation of a separator for oil and grease in a kitchen having a liquid level maintaining means, lighter substance overflow port above the static water level, and a means to raise the water level such that the lighter substance flows out of the port, wherein the means to raise the water level is a weir having a pierced portion patentably distinguishes over the prior art of record.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other references of interest include Tolmie, Middelbeek, Colket, Maranville, Weisgerber and Pank.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to be 'C. Upton', with a stylized, flowing script.

Christopher Upton  
Primary Examiner  
Art Unit 1724